

Appl. No. 10/805,803
Response to Restriction Requirement dated July 8, 2009
Reply to Office Action of June 8, 2009

III. Claims 15-19 and 22, drawn to a VLIW instruction capable of specifying instruction timing, classified in class 712, subclass 24.

Applicants elect with traverse the Group I claims 1-7, 9-12 and 28-30.

Interview Summary

The undersigned spoke with both Mr. Faherty and Mr. Chan about the inappropriateness of the restriction requirement on the facts of this case. MPEP § 811 makes it clear that while discretion exists to make a restriction after a first action on the merits, that discretion should be sparingly used. That is even more true when as here a previous restriction and election have been made and all the present claims have been fully examined together a total of four times by two previous examiners.

Argument

Examiners are meant to give full faith and credit to examination done by previous examiners and the assignment of the case to a new examiner is not a basis for going back to square one and starting anew. MPEP § 706.04 is clear on this point stating at page 700.80 the following:

PREVIOUS ACTION BY DIFFERENT EXAMINER

Full faith and credit should be given to the search and action of a previous examiner unless there is a clear error in the previous action or knowledge of other prior art. In general, an examiner should not take an entirely new approach or attempt to reorient the point of view of a previous examiner, or make a new search in the mere hope of finding something. *Amgen, Inc. v. Hoechst Marion Roussel, Inc.*, 126 F. Supp. 2d 69, 139, 57 USPQ2d 1449, 1499-50 (D. Mass. 2001).

No clear error has occurred, knowledge is different than hope. If the Examiner knows of art, he should cite it, but he should not search in the hope that he might find something different or better

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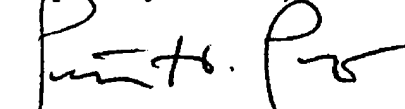
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than the items found by two Examiners before him who discharged their duties to the best of their abilities. The latest amendment represents a focusing of the claims so that the issues remaining should now be narrowed and limited so that no further searching should now need to be done. Where one simply cites known prior art there is no significant burden and the restriction here would be clearly inappropriate under MPEP § 811.

In the event the restriction requirement is maintained, please cancel claims 13-19 and 22 without prejudice to the presentation of these claims by way of a divisional or otherwise.

Respectfully submitted,



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